Tax Bulletin

September 2022

In everything we do, we nurture leaders
and enable businesses for a better Philippines.

#SGVforABetterPhilippines

SGV
Building a better working world

Table of contents

For sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating, the VAT-registered taxpayer must comply with invoicing requirements under Sections 108 (B) (3), 113, and 237 of the Tax Code, as amended, and must submit its COC issued by the ERC as required under EPIRA.	**29**
The CIR's inaction is "deemed a denial" of the claim. The taxpayer's failure to appeal within 30 days renders the "deemed a denial" decision of the CIR final and unappealable. The principle of solutio indebiti is not applicable to cases involving tax refunds.	**30**
As a general rule, tax refunds are construed against the taxpayer. When the taxpayer however presents reasonable proof, then the burden shifts to the taxing authority. To rule otherwise would be to unduly burden the taxpayer, which has no statutory nor jurisprudential basis.	**31**
VI. Supreme Court Decisions	
Sale of unissued shares must be ratified by the Board of Directors of a company. Otherwise, it results in a violation of a shareholder's pre-emptive right.	**32**
The primary test for the distinction between a holding company from a financial intermediary for purposes of local business taxation contemplates "regularity of function, not on an isolated basis, with the end in mind for self-profit."	**33**

BIR Administrative Requirements

RR No. 12-2022 prescribes the policies and guidelines for the availment of incentives under RA No. 9999 (Free Legal Assistance Act of 2010).

RR No. 12-2022 dated 13 September 2022

- Lawyers or professional partnerships rendering actual free Legal Services shall be entitled to an allowable deduction from the gross income equivalent to the lower of:

    1. The amount that could have been collected for the actual free Legal Services rendered; or

    2. 10% of the gross income derived from the actual performance of the legal profession.

- The actual free Legal Services shall be exclusive of the minimum 60-hour mandatory legal aid services rendered to indigent litigants as required under the Rule on Mandatory Legal Aid Services for Practicing Lawyers, under Bar Matter No. 2012, issued by the Supreme Court.

- In order to avail of the incentives provided in Section 4 of the Regulations, the lawyers or professional partnerships shall attach to their Income Tax Return (ITR) for the period when the deduction was claimed the following documents:

    1. Certification from the Public Attorney's Office, the Department of Justice or accredited association of the Supreme Court indicating that:

        - The legal services to be provided are within the services defined by the Supreme Court;

        - The agencies cannot provide the Legal Services to be provided by the private counsel; and

- The Legal Services were actually undertaken.

  The Certification from the association and/or organization duly accredited by the Supreme Court shall specify the number of hours actually provided by the lawyer or professional partnership in the provision of the Legal Services.

2. Accomplished BIR Form No. 1701 (for individual lawyers) or BIR Form No. 1702-EX (for general professional partnership), particularly Schedules 5 and 2, respectively, on "Special Allowable Itemized Deductions."

3. Sworn Statement of the Lawyer or managing partner (in case of professional partnership) as to the amount that could have been collected for the actual free legal service.

- If any provision of the Regulations is declared invalid by a competent court, the remainder of the Regulations or any provision not affected by such declaration of invalidity shall remain in force and effect.

RMO No. 34-2022 prescribes the revised guidelines and procedures in the processing of AABs request for refund of over-remittance of tax collections.

RMO No. 34-2022 dated 1 September 2022

- Refund of over-remittance of tax collection by the AABs shall be processed in accordance with the procedures as stated in the Order pursuant to the provisions of RR No. 5-1984 (Sec. 5, A 4 and Sec. 5, B 8), Treasury Circular No. 3-2013 and the Memorandum of Agreement (MOA) among the Bureau of Internal Revenue (BIR), the Bureau of the Treasury (BTr) and the AABs.

- Refund of over-remittance by the AABs as collecting agents should not be construed as refund of tax payments of a taxpayer. Erroneous remittance may be adjusted by AABs within five days from date of collection. As prescribed under Part D No. 4 (d) of Treasury Circular No. 3-2013 dated 11 December 2013, adjustments to be made beyond the allowed five banking days from collection date shall have prior clearance from the BTr. The BTr shall acknowledge receipt of adjustment requests from banks and coordinate with the BIR for immediate action and approval.

- The letter-request for refund of over-remittance should be made in writing, addressed to the Assistant Commissioner-Collection Service (ACIR-CS), Attention to the Chief, Revenue Accounting Division (RAD), and shall indicate the following:

  1. AAB Branch involved;
  2. Collection date involved;
  3. Amount of over-remittance;
  4. Date/s of remittance;
  5. Amount of collection per BCS-A (Batch Control Sheet-A); and
  6. Reason(s)/cause(s) of over-remittance.

- The letter-request for refund of over-remittance should be submitted, together with the following attachments:

  1. Affidavit executed by the AAB Branch Officer indicating the facts/information relative to the case of refund; and

2. Other proof of evidence to further substantiate the claim for refund such as official receipt of other payments (Social Security System (SSS)/Credit Card Co./etc.) erroneously reported as BIR payment.

- The procedures stated in the Order shall apply to all channels of payment that passes through the banking system (whether manual or electronic/online collections).

- No request for refund shall be granted unless the collection data, as shown/uploaded in the Collection and Bank Reconciliation System – Integrated Tax System (CBRS-ITS)/Collection Remittance and Reconciliation–Internal Revenue Integrated System (CRRIRIS), has just been adjusted/corrected.

- It shall be the responsibility of the Revenue District Office (RDO) concerned to adjust/correct the affected BCS-A report uploaded in the CBRS-ITS/CRR-IRIS of overremittance which resulted from double uploading of collections and/or erroneous inclusion of payments.

- The functions and responsibilities of the RDO discussed in the Order shall also mean the functions and responsibilities of the Large Taxpayer Document Processing and Quality Assurance Division (LTDPQAD) and the Large Taxpayer District Office (LTDO) for AABs' large taxpayer collections under their jurisdiction.

RMO No. 36-2022 issued on 15 September 2022 prescribes the guidelines and procedures on the acceptance of ICT Systems/Solutions to be donated by a TPD/Provider to the BIR.

RMO No. 36-2022 dated 29 July 2022

- Interested TPD shall tender a signed Letter of Intent (LOI), addressed to the Commissioner of Internal Revenue, Attention: The Deputy Commissioner of the concerned Process Owner (PO), signifying his/her/its intention to develop a system at no cost to the BIR.

- The LOI shall include a Technical Proposal containing, among others, the statement of work, including the following: a) Brief Introduction; b) Purpose/Objective; c) Functional Scope; d) Technical Diagram; e) Technical Specifications/ Requirements (i.e., hardware and software to be used, security components, etc.); and f) Work Plan containing key activities and timelines. The LOI and the technical proposal shall be assigned to the concerned PO by his/her respective Deputy Commissioner (DCIR).

- The PO shall coordinate with the concerned Information Systems Group Project Manager (ISG PM) in evaluating the proposal to ensure that it meets relevant functional and technical requirements of the Bureau, while addressing potential concerns on data privacy, security, interoperability (if necessary), among others.

- The following documents (attached as Annexes in the Order) shall be submitted by the TPD prior to the start of his/her/its work/engagement:

  1. Draft Memorandum of Agreement or Memorandum of Understanding (MOA or MOU), which shall contain a statement that the application system/solution and its components shall be donated to the BIR;

  2. Signed Non-Disclosure Agreement (NDA); and

  3. Signed Acceptable Use Policy (AUP).

- A project team may be created through a Revenue Special Order, if necessary, to oversee the project development and its implementation. The Privacy Impact Assessment (PIA) Team of the BIR Data Privacy Committee shall conduct a PIA using the prescribed template (Annex E) at the start of the project to ensure inclusion of privacy protection, which may be considered throughout the development lifecycle of a system or program.

- The application system development duration/engagement shall not exceed one year. Failure to deliver on the agreed target date is a ground to terminate/ suspend the MOA or MOU. A progress report of the engagement shall be submitted by ISG PM to concerned Assistant Commissioner (ACIR) and DCIR. All changes to the agreed/approved scope and timelines shall be discussed and documented through a Change Request.

- A system walkthrough for the developed application shall be conducted prior to acceptance testing. Likewise, a briefing/demonstration of the new application system shall be conducted prior to its implementation.

- Application system/solution developed shall undergo acceptance testing following the procedures per RMO No. 24-2003 (Revised Guidelines and Procedures for Testing and Acceptance of In-house Developed and Outsourced Application System) to evaluate conformance to business and technical standards of BIR.

- Migration of new application system/solution shall be done following the procedures prescribed in ISG Memorandum Order No. 2-2016 (Processing and Implementation of Migration Request).

- The POI/ISG PM shall ensure that budget for the other components of the system/ solution (i.e., server, license/s, maintenance/sustainability), which are not covered by the MOA or MOU, is included in the Project Procurement Management Plan (PPMP) to sustain the application system/solution. Delivery/availability of all resources required during development and testing shall be discussed with and agreed upon by both BIR and TPD.

- The technical infrastructure requirements of the project (i.e., server, network requirements, and so on) shall be determined and discussed with the concerned ISG offices to ensure availability and readiness once the developed system is implemented/rolled out.

- Since this is a donation, the TPD shall submit all system/technical documentations (i.e., source code, configuration, and other relevant documentations) to the BIR, and these shall become the property of the BIR. The concerned PO/ISG PM shall ensure that the final copies of project documentations are turned over to BIR.

- A separate Deed of Donation (DOD) for the developed application system/solution shall be submitted following the procedures in processing DOD per RMO No. 15-2020 (Updated Procedures in the Acceptance of Property Donations to the Bureau of Internal Revenue Pursuant to Revenue Delegation Authority Order (RDAO) No. 4-2010, as Amended by RDAO No. 4-2019 dated 31 July 2019).

- A Project Closure Report shall be prepared and submitted by PO/ISG PM to the IT Planning and Standards Division, Information Systems Development and Operations Service in compliance with ISG Memorandum Order No. 1-2022 (Amending ISG Memorandum Order No. 2-2013 on the Preparation and Submission of Project Closure Report).

RMO No. 37-2022 was issued on 15 September 2022 amending RMO No. 24-A-1974 and RMO No. 29-2014 as amended by RMO No. 43-2016 providing the policies and guidelines for the issuance of International Carriers Special Certificate.

RMO No. 37-2022 dated 5 September 2022

- This Order covers International Carriers applying for International Carriers Special Certificate (hereinafter referred to as "ICSC applicants").

- The said RMO provides for the policies and guidelines as follows:

1. REGISTRATION

   - **For new applicants** - ICSC Applicants shall register and secure Taxpayer Identification Number (TIN) online through the Bureau's Online Registration and Update System (ORUS) at **https://orus.bir.gov.ph** or by visiting the Bureau's website at **www.bir.gov.ph** under the "eServices icon."

     The ICSC Applicants shall upload scanned copies of the original documents:

     a. Any Apostilled official documentation issued by an authorized government body (e.g., government agency (tax authority) thereof, or a municipality) that includes the name of the non-individual and the address of its principal office in the jurisdiction in which the non-individual was incorporated or organized (e.g., Articles of Incorporation, Certificate of Tax Residency);

     b. Apostille Board Resolution/Secretary's Certificate (or equivalent); and

     c. Any government-issued ID of the authorized representative and/or principal signatory.

   - **For applicants with existing TIN** - International Carriers shall use their existing TIN when applying for the International Carriers Special Certificate.

   - In case of system downtime or system unavailability of ORUS, the ICSC applicant shall register with Revenue District Office (RDO) No. 39 - South Quezon City through electronic submission of application using the New Business Registration (NewBizReg) Portal under the "eServices icon" or via email. The email address and subject shall be automatically displayed by the portal for ICSC applicant reference.

   - It shall be the responsibility of the Agent to register the ICSC applicant (principal) it represents and apply for the latter' TIN and ensure that the ICSC applicant does not have an existing TIN. It shall be the responsibility of the Agent or new Agent to update the registration information of the ICSC applicant and apply for the cancellation of the multiple TINs of the ICSC applicant.

   - During registration, the designation of email address is mandatory, and such email addresses should be of the principal or ICSC applicant's official and permanent email address. The designated permanent e-mail address shall be the official e-mail address of the registered individual or non-individual taxpayers and not the e-mail address of the authorized representative or Agent. Notices, letters, and other processes of the Bureau may be sent through the designated permanent email address.

   - In case of change of Agent, the new Agent shall update its principal's registration information as its new Agent. The Agent shall also ensure that its principal does not have multiple TINs.

- The RMO also provides the Tax Compliance of these ICSC Applicants:

  1. **Taxes to be paid:**

     - **INCOME TAX** of 2.5 % of the Gross Philippine Billings imposed under Section 28(A)(3)(a) and (b) of the NIRC, as amended, unless it is subject to a preferential rate or exemption on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or on the basis of reciprocity, copies of the tax treaties entered into by the Philippines are found in the BIR website under the topic "Double Tax Agreements"; and

     - **PERCENTAGE TAX** equivalent to three percent (3%) of the gross receipts pursuant to Section 118 of the NIRC, as amended.

     The Gross Philippine Billings/Gross Receipts shall be computed using the exchange rate at the time of payment.

  2. **Time of Filing and BIR Forms to be used:**

     - The agent shall file the pertinent payment forms for the ICSC applicant using the TIN and name of such ICSC applicant. The agent should not use its own TIN in filing the payment forms of the ICSC applicant. It shall be the duty of agent to ensure the timely filing and payments of the principal.

     - Prior to the application for International Carriers Special Certificate, the Income Tax and Percentage Tax shall be paid separately using BIR Form No. 06051 for each tax type, indicating in the Alphanumeric Tax Code (ATC) field the following information:

For Income Tax	- ATC code is "IC080" (See ANNEX A)
For Percentage Tax	- ATC code is "PT041" (See ANNEX B)
For Certification Fee	- ATC code is "MC200"
For P30 DST	- ATC code is "DS010"

       The ICSC applicant shall indicate the transaction date as the return period date in the form.

     - The ICSC applicant may prepare and file the BIR Form No. 0605 through the offline eBIRForms package, which is downloadable from the following websites: **www.bir.gov.ph** or **www.knowyourtaxes.ph/ebirforms**.

     - For every filing of payment form, the designated email address should be of the ICSC applicant official and permanent email address registered with the BIR's registration system and not the e-mail address of the authorized representative or Agent. In case of change of email address of the principal, the Agent shall update immediately the permanent email address of the principal with the Bureau.

  3. **Payment Facilities and Validation of Payment** – It shall be based on the acceptable manner of payment laid down by this RMO.

- After the application and compliance, the following must be procedures must be followed for the application for BIR ICSC Certificate:

    1. The International Carrier Special Certificate shall only be issued upon payment of 3% common carrier's tax (Percentage Tax) and 2.5% income tax (Gross Philippine Billings) unless the preferential rate is used pursuant to Sections 118(B), and 28(A)(3)(b) respectively, of the 1997 Tax Code, as amended.

    2. The Regional Director - Revenue Region No. 7A - Quezon City shall, upon application (ANNEX C) and evaluation of documentary requirements (ANNEX D), issue the International Carriers Special Certificate.

    3. The following are the documentary requirements to be submitted before the issuance of the International Carriers Special Certificate:

        - Online application for BIR International Carrier Special Certificate or duly filled-up BIR Form No. 1948 (ANNEX C);

        - Copy of the Vessel/Ship Registration;

        - Copy of the charter contract (in case this is unavailable, please include the reasons for its unavailability);

        - Fixture note with signatory of owner and charterer;

        - BIR Form 0605 of the 2.5% or 1.5% income tax, as the case may be, and 3% common carrier's tax, together with payment details/receipt duly received and validated by the BIR Authorized Agent Bank (AAB); in case of ePayment, scanned copy of confirmation email and payment transaction number; and

        - Proof of payment of P100 certification fee and proof of payment of Php30 loose Documentary Stamp Tax or purchase of two loose documentary stamps per application.

    4. The Php100 certification fee and Php30 loose DST shall be filed electronically using BIR Form No. 0605 through eBIRForms Package and pay online through BIR ePayment Channels separately.

    5. For the ePayment of loose DST, constructive affixing of DST on the Certificate shall be done by the concerned office by stamping "DST Paid Online" including the Payment Transaction Number and Date of Payment, at the lower portion of the Certificate.

    6. Online application for International Carrier Special Certificate shall be made through the BIR website at **https://www.bir.gov.ph** under "eServices" icon and by clicking the "eICSC" icon. An application reference number shall be received upon successful submission.

    7. The documentary requirements shall be electronically filed thru the BIR ICSC Centralized email address: **icsc_1948@bir.gov.ph** with "Application for ICSC [REF. NO.___]" as the email subject line format.

    8. All the required documentary requirements shall be prepared and scanned in Portable Document Format (PDF) copy and compressed into one zip file which shall not exceed the file size of 10MB.

- Attached to this RMO are the following Attachment and Annexes:

    1. ICSC webpage and a step-by-step guide on eICSC online portal;
    2. Annex A – BIR Form No. 0605 for Income Tax;
    3. Annex B- BIR Form No. 0605 for Percentage Tax;
    4. Annex C – BIR Form No. 1948 Application for BIR International Carriers Release Certificate; and
    5. Annex D – Checklist of Documentary Requirements.

RMC No. 120-2022 provides additional guidelines and procedures on the manner of payment of penalties relative to the violations incurred by RBEs in the IT-BPM Sector on the conditions prescribed regarding WFH arrangements for the period 1 April 2022 to 12 September 2022.

RMC No. 120-2022 dated 18 August 2022

- **Non-compliance** of the RBEs in the IT-BPM sector with the prescribed conditions under FIRB Resolution No. 017-22 for **at least one day** shall result in the **suspension of its income tax incentives for the month when the violation took place**. In such a case, the RBEs shall pay, as penalty, the **regular income tax of either 25% or 20%**, whichever is applicable, for the aforesaid month. In addition, violations committed beyond 13 September 2022 onwards may subject the RBEs to applicable taxes.

- The penalty shall be paid using **BIR Form No. 0605**, by choosing the radio button pertaining to **"Others,"** under **"Voluntary Payment"** and by indicating in the field provided the phrase **"Penalty pursuant to FIRB Res. No. 017-22."** The tax type code shall still be **"IT"** and the ATC to be indicated is **"MC 200."**

- RBEs with violation shall continue to file and pay Quarterly Income Tax Return (QITR) following their usual procedure of computation of the tax due as if no violation was committed, separate computation for the penalty on the WFH arrangement shall be provided in an additional schedule to be attached to **BIR Form No. 0605**, to present the actual tax due.

- For their Annual Income Tax Return (AITR), RBEs shall continue to file using BIR Form No. 1702-EX for those with Income Tax Holiday (ITH) incentive and BIR Form No. 1702-MX for those enjoying Gross Income Tax (GIT) incentive or those with mixed transactions. However, they are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations (i.e., Part VI-Schedule I for BIR Form No. 1702-EX and Part IV-Schedule 5 for BIR Form No. 1702-MX).

- If the **violation happened during the last quarter of the fiscal year** (e.g., fiscal year ending November 2022), the penalty shall be computed based on the manner prescribed in RMC No. 39-2022. Likewise, for RBEs with violation of the provisions of FIRB Resolution No. 19-21, the same manner of computation, filing and payment of the penalty as indicated in this memorandum shall be applied.

- To emphasize the manner of payment, the RBE which committed the violation shall pay the penalty using BIR Form No. 0605 **on or before the due date prescribed for the filing or payment of the quarterly income tax**, subject to adjustment upon the filing of the annual income tax return. For the **fiscal quarter with month/s subject to penalty that already ended and returns have been filed**, RBEs shall file and/or pay their penalty **within 10 days after the issuance of this Circular**. If the same is paid beyond the said period, administrative penalties shall be imposed considering that the penalty pertains to income tax.

RMC No. 121-2022 prescribes the guidelines on the lifting of suspension of field audit and operations pursuant to RMC No. 77-2022.

RMC No. 121-2022 dated 4 August 2022

- The suspension of field audit and other field operations on all outstanding Letters of Authority (LOA)/Audit Notices and Letter Notices shall be lifted on a per Investigating Office upon approval by the Commissioner of Internal Revenue (CIR) of the Memorandum Requests from the following:

Investigating Office	Requesting Official	Recommending Approval
Revenue District Offices (RDOs)/Regional Investigation Divisions (RIDs)/VAT Audit Sections/Office Audit Sections	Regional Director	Assistant Commissioner, Assessment Service and Deputy Commissioner-Operations Group (DCIR – OG)
National Investigation Division (NID)	HREA, Enforcement & Advocacy Service	Assistant Commissioner, Enforcement & Advocacy Service and Deputy Commissioner-Legal Group (DCIR – LG)
Large Taxpayers Audit Division/LT VAT Audit Unit	HREA, Large Taxpayers Service – Regular/Excise/ Programs & Compliance Group	Assistant Commissioner, Large Taxpayers Services (LTS)

- The RMC prescribes the templates of the Memorandum Request as Annex A (for Regional Offices/Enforcement Advocacy Service) and Annex B (for Large Taxpayers Service).
- Upon the approval of the Memorandum Request by the CIR, the concerned Investigating Office shall immediately resume its field audit and other field operations on all outstanding LOA/Audit Notices and Letter Notices.
- In any case, no new LOA, written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served except:

    1. In those cases enumerated under RMC No. 77-2022; and
    2. In case of reissuance/s to replace previously issued LOA/s due to change of revenue officer and/or group supervisor.

RMC No. 122-2022 prescribes the guidelines in updating of the registration information record of taxpayers who will enroll in the Bureau's ORUS.

RMC No. 122-2022 dated 22 August 2022

- The BIR issued this RMC to advise all clients of the Bureau to update their registration records to be able to enroll in the ORUS, which will allow taxpayers to register, update and transact registration-related transactions online.
- All taxpayers who intend to transact online with the Bureau thru the ORUS, once available, and those who are currently transacting manually for their registration-related transactions, shall update their registration records, such as e-mail address and contact information using the S1905 - Registration Update Sheet (RUS) (Annex A). The RUS is available at the Client Support Section (CSS) of the Revenue District Office (RDO) and the Bureau's Official Website (www.bir.gov.ph) under the Advisory Section.

- The designated e-mail address should be the taxpayer's official e-mail address. This shall be used in serving BIR orders, notices, letters and other processes/ communications to the taxpayers.
- Registered taxpayers shall update their Head Office registration first before updating their branches.
- In case of employees, employers shall inform their employees regarding this requirement.
- The RUS may be submitted via e-mail thru the list (Annex B), to the concerned RDO where the taxpayer is registered.

RMC No. 123-2022 addresses and provides uniform answers to the numerous issues and concerns relative to the recently issued RR No. 6-2022 regarding the removal of the five-year validity period on receipts/ invoices.

RMC No. 123-2022 dated 30 August 2022

Issue/Scenario	Clarification
Q1. When is the effectivity of RR No. 6-2022?	A1. The effectivity date shall be on **16 July 2022**, which is 15 days from the date of its publication, which was 1 July 2022.
Q2. Who are covered by the aforesaid Regulations?	A2. All taxpayers who are/will be **using Principal and Supplementary Receipts/invoices** shall be covered by the aforesaid Regulations or taxpayers **with/who will apply** for any of the following: a. Authority to Print (ATP); b. Registration of Computerized Accounting System (CAS)/Computerized Books of Accounts (CBA) and/or its Components; and c. Permit to Use (PTU) Cash Register Machines (CRM)/Point-of-Sale (POS) Machines and Other Sales Receipting Software.
Issue/Scenario	**Clarification**
Q3. Can we use the expired but unused receipts/ invoices with a validity date of on or before 15 July 2022 after the effectivity of the said Regulations?	A3. No. All receipts/invoices which expired on or before 15 July 2022 are **no longer valid for use**. In this regard, the Validity Period of receipts/ invoices shall be based on the date of issuance of the ATP, as provided below:

Date of ATP		Unused Receipts/ Invoices as of Expiry Date
Date of Issue	**"Valid Until" as reflected in ATP/ Receipts/ Invoices**	**Can they still be used?** **(Yes/No)**
On or before 16 July 2017	On or before 15 July 2022	No
17 July 2017 onwards	16 July 2022 onwards	Yes

Issue/Scenario	Clarification
Q4. What should the taxpayer do with the unused/expired receipts/invoices dated on or before July 15, 2022?	A4. Pursuant to the provisions of RMO No. 12-2013, **all unused and expired receipts/invoices shall be surrendered** together with an inventory listing to the RDO where the Head Office or Branch is registered on or before the 10th day after the validity period of the expired receipts/invoices for the destruction of such receipts/invoices.
Q5. Can the taxpayer still use the receipts / invoices with existing ATP expiring on or after July 16, 2022?	A5. Yes. Taxpayers with receipts/invoices with existing ATP expiring on or after 16 July 2022 **may still issue such receipts/invoices until fully exhausted**. The phrase, "THIS INVOICE/ RECEIPT SHALL BE VALID FOR FIVE YEARS FROM THE DATE OF THE ATP" and the "Validity Period" reflected at the footer of the printed receipts/ invoices shall be disregarded.
Q6. Is there a penalty if the taxpayer with ATP expiring on or before July 15, 2022 failed to apply for subsequent ATP not later than the sixty (60) - day mandatory period prior to expiration?	A6. Taxpayers **shall not be liable to pay penalty** for late application of ATP.
Q7. What are the consequences if taxpayer used/will use the receipts/invoices that expired prior to July 15, 2022?	A7. Taxpayer who used unregistered receipts or invoices **shall be subject to penalty** amounting to **Php20,000 for the first offense and Php50,000 for the second offense**.
Q8. How does RR No. 6-2022 affect the accreditation of CRM/ POS and other Sales Receipting Software?	A8. All applications for accreditation of CRM/POS and other Sales Receipting Software **shall no longer require the phrases** "THIS INVOICE/ RECEIPT SHALL BE VALID FOR FIVE YEARS FROM THE DATE OF THE PERMIT TO USE" and the "Valid Until (mm/ dd/ yyyy)" of PTU **to be reflected on the footer of generated receipts/invoices** during the evaluation.
Q9. How does RR No. 6-2022 affect the registration of CAS and/ or its Components?	A9. The phrase, "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE" as previously required in RMO No. 9-2021 **shall no longer be required to be reflected on the generated receipts/invoices**.

Issue/Scenario	Clarification
Q10. How should the taxpayer-user with registered PTU CRM/ POS Machines/CAS comply with the provisions of RR No. 6-2022?	A10. **Taxpayer-users shall be required to reconfigure their CRM/POS Machines/ CAS to remove the phrases** "THIS INVOICE/ RECEIPT SHALL BE VALID FOR FIVE YEARS FROM THE DATE OF THE PERMIT TO USE" / "THIS INVOICE/ RECEIPT SHALL BE VALID FOR FIVE YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE" and "Valid Until (mm/ dd/ yyyy)". However, it should be noted that a written notification shall no longer be required to be submitted to the concerned RDO although such modifications are considered as minor enhancements due to the fact that such modifications were mandated upon the effectivity of RR No. 6-2022.
Q11. Is there a period required within which the taxpayer-user shall remove the phrase and validity period by reconfiguration of the CRM/POS and/or CAS and other machines generating receipts/ invoices?	A11. Yes. The CRM/POS and/or CAS and other machines generating receipts/invoices **shall have to be reconfigured until 31 December 2022** to comply with the provisions under RR No. 6-2022.

RMC No. 127-2022 lifts and removes the suspension and prohibition RMC No. 77-2022 dated 30 May 2022 on the following, effective immediately:

RMC No. 127-2022 dated 7 September 2022

- All field audit and other field operations of the Bureau of Internal Revenue (Bureau) covered by outstanding Mission Orders (MOs) authorizing the conduct of enforcement activities and operations of any kind, such as but not limited to ocular inspection, surveillance activities, stock-taking activities, and the implementation of the administrative sanction of suspension and temporary closure of business; and

- The issuance of new MOs authorizing such activities and operations.

For this purpose, all internal revenue officers and others concerned should strictly comply with the existing applicable Rules and Regulations of the Bureau on the issuance, conduct, and implementation of such MOs.

Bureau of Customs

Exemption of Shipments of Consolidated Balikbayan Boxes from the 100% Physical Examination Required of Shipments Tagged Abandoned in the E2M Customs System

OCOM Memo No. 102-2022 exempts shipments of consolidated balikbayan boxes sent through DTI-FTEB accredited cargo forwarders tagged abandoned from the 100% physical examination. Instead, these shall undergo the mandatory non-intrusive inspection and 10% physical examination, and Trace Detention System scanning.

Office of the Commissioner (OCOM) Memo No. 102-2022 dated 22 August 2022

- One of the reasons being attributed to the delays in the clearance of Balikbayan Boxes sent through DTI-FTEB Accredited Cargo Forwarders is the requirement that all shipments subject of request for the lifting of their abandonment status in the E2M Customs System must be 100% physically examined during the cargo clearance procedure. Through OCOM Memo No. 102-2022, only if there is an irregularity in the image, or if alerted, shall the said shipments be subject to 100% physical examination at the Ports.

Deferral of the Implementation of the Client Profile Registration System (CPRS) for Non-Broker Account

OCOM Memo No. 106-2022 defers the implementation of the unnumbered memorandum dated August 18, 2022, entitled "Implementation of CPRS for Non-Broker Account" that will accommodate the registration of non-brokers in the CPRS as declarants.

OCOM Memo No. 106-2022 dated 30 August 2022

- The unnumbered memorandum provides that non-brokers may be registered in the CPRS as declarants. Application for registration of non-brokers as declarants shall be made through the Value-Added Service Provider (VASPs) with the "Client Type" field equal to "Broker", "Nature of Business" field equal to "Declarant", the "PRC ID No." equal to "NONBROKER," and either the Importer TIN or the Exporter TIN of the company that they will be acting for as declarant.

Supplemental Guidelines on the Request for Issuance of a Letter of Authority (LOA)

OCOM Memo No. 109-2022 provides strict and immediate compliance of supplemental guidelines on the request for issuance of a LOA to ensure integrity in the implementation of the visitorial power of the Commissioner of Customs.

OCOM Memo No. 109-2022 dated 30 August 2022

- All requests for the issuance of a LOA must be accompanied by:

  1. Summary of intelligence report as to why the subject warehouse is suspected of containing smuggled goods;
  2. Pictures of the subject area; and
  3. Description of the goods to be found in the subject warehouse.

- Same requirements shall be complied with by other government agencies that shall request the issuance of a LOA.

Board of Investment

BOI Memorandum Circular No. 2022-007 provides specific guidelines to Implement the 2022 Strategic Investments Priority Plan (SIPP).

BOI Memorandum Circular No. 2022-007 8 dated August 2022

Specific Guidelines for Tiers I, II, and III

All projects, regardless of Industry Tier, must satisfy the qualifications for registration set forth under the 2020 IPP General Policies and Specific Guidelines, as amended by BOI MC No. 2021-005, until such time that the 2022 SIPP General Policies and Specific Guidelines have been issued.

Projects must comply with the qualifications for registration under Tier I in order to qualify under Tiers II or III, unless otherwise specified herein.

Among the salient provisions of the SIPP Specific Guidelines are as follows:

- **Tier II**

  The project must engage in activities that address industry value chain gaps or are import substituting.

  To qualify for Tier II, the project must be supported with a study or strong justification, that is deemed acceptable to the concerned IPA, showing how the project will fill in a product, service or technology gap in the industry value chain.

As may be required by the concerned IPA, an endorsement that the project will address value/supply chain gap from relevant government agency or industry association (in case there is no relevant government agency) must be submitted.

Project / Activity	Coverage	Application for Registration
1. **Green Ecosystems**	▸ Electric vehicle (EV) assembly, manufacture of EV parts, components and systems, establishment and operation of EV infrastructure ▸ Manufacture of energy efficient maritime vessels and equipment ▸ Renewable energy ▸ Energy efficiency and conservation projects ▸ Energy storage technologies	▸ Must be accompanied by an endorsement from the Department of Energy (DOE), as applicable
	▸ Renewable energy projects covered under RA No. 9513 or the Renewable Energy Act of 2008	▸ Applicant enterprises shall elect to be governed by the provisions of the CREATE Act or RA No. 9513 at the time of their application for registration.
	▸ Integrated waste management, disposal, & recycling	▸ Must be accompanied by an endorsement from the Department of Environment and Natural Resources (DENR)
	▸ Electronic devices and circuits for smart grid and renewable energy (includes wearable solar devices) ▸ Bioplastics and biopolymers	
2. **Health Related Activities**	▸ Manufacturing in support of the Vaccine Self-Reliance Program or other health-related programs as endorsed by the Department of Health (DOH), Department of Science and Technology (DOST) or other similar agencies ▸ Medicines ▸ Active pharmaceutical ingredients (API) ▸ Specialty hospitals	

Project / Activity	Coverage	Application for Registration
3. **Defense Related Activities**	▸ Manufacture and service activities related to national defense	▸ Shall be accompanied by an endorsement from the Department on National Defense (DND), Armed Forces of the Philippines (AFP), or National Security Council (NSC)
4. **Food Security Related Activities**	▸ Products and services critical to competitively ensure food security or in support of green/organic agriculture, as endorsed by the Department of Agriculture (DA) or Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development (PCAARRD) ▸ Projects, whether commercial production and/ or processing, complying with the criteria based on United Nations - Food and Agriculture Organization's (UN-FAO's) food security dimensions *(Please refer to the attached issuance for further details on the criteria)*. ▸ Projects outside the indicative list that comply with any of the aforementioned criteria	▸ Prior to availment of Income Tax Holiday (ITH) incentive, registered projects involving the production of organic inputs/ food products shall have the following: 1. Copy of organic certificate issued by an organic certifying body (whether through the Participatory Guarantee System (PGS) or third party) accredited by the Department of Agriculture - Bureau of Agriculture and Fisheries Standards (DA-BAFS); and 2. Copy of Certificate of Product Registration issued by DA-BAFS or Food and Drug Administration (FDA).

- **Tier III**

Project / Activity	Coverage	Application for Registration
1. **Research & Development (R&D) and Activities Adopting Digital Production Technologies of the Fourth Industrial Revolution**	▸ Robotics ▸ Artificial intelligence (AI) ▸ Additive manufacturing ▸ Data analytics ▸ Digital transformative technologies (e.g., cloud computing services, hyperscalers, data centers, and digital infrastructure) ▸ Nanotechnology (includes nanoelectronics) ▸ Biotechnology ▸ Production and/ or adoption of new hybrid seeds ▸ Other Industry 4.0 technologies	▸ Must be accompanied by an endorsement from the DOST, Department of Trade and Industry (DTI) - Competitiveness and Innovation Group (CIG) or any other institutions as maybe identified by the BOI Board. ▸ **For data centers**, at least 20% of total power consumption must be from renewable energy. The power consumption threshold may be increased, as determined by the BOI Board. ▸ **For space-related infrastructures** – Must be accompanied by an endorsement from the Philippine Space Agency.
2. **Highly Technical Manufacturing and Production of Innovative Product and Services**	▸ Manufacture of equipment, parts & services ▸ Commercialization of intellectual property (IP) and R&D products/services, aerospace, medical devices (except personal protective equipment) ▸ Internet of things (IoT) devices and systems (includes wireless sensors and devices) ▸ Full-scale wafer fabrication ▸ Advanced materials.	
3. **Establishment of Innovation Support Facilities**	▸ R&D hubs ▸ Centers of Excellence ▸ Science & technology parks ▸ Innovation incubation center ▸ Tech startups, startup enablers: incubators & accelerators ▸ Space-related infrastructures	

This Circular shall take effect immediately after its publication in a newspaper of general circulation.

(Editor's Note: BOI Memorandum Circular No. 2022-007 was published in The Philippine Star *last 12 August 2022.)*

PEZA

PEZA Memorandum Circular No. 2022-061 follows FIRB Advisory No. 007-2022 and prescribes status quo of the 30/70% WFH Arrangement after the expiration of the FIRB Resolution No. 017-22.

PEZA Memorandum Circular No. 2022-061 dated 9 September 2022

PEZA issued this Circular to inform that the FIRB has provisionally extended the 30/70% WFH Arrangement of RBEs in the IT-BPM sector pursuant to FIRB Resolution No. 017-22 dated 21 June 2022, which is set to expire on 12 September 2022.

The provisional extension shall be effective from 13 September 2022 until the FIRB decides on PEZA's request for the extension of the WFH arrangement. Therefore, all WFH LOAs issued to RBEs by PEZA are extended until further notice.

PEZA Memorandum Circular No. 2022-062 amends the documentary requirement for the PV.

PEZA Memorandum Circular No. 2022-062 dated 14 September 2022

PEZA amended the documentary requirements for securing the PV, specifically in relation to the company's letter-request.

A company registered as a Philippine Branch Office of a foreign-based parent company does not have a President, CEO, Board of Directors nor a Corporate Secretary in the country. This peculiar business structure affects the company's compliance as it needs to secure from its officers abroad documents that still need to be apostilled.

In the interest of promoting ease of doing business and provide more options to companies to assist them in complying with the requirements for a PV, the requirement is amended as follows:

"Notarized Company's letter-request addressed to the PEZA Director General signed by its President, Chief Executive Officer (CEO) ***or any of the company officers indicated in its updated General Information Sheet (GIS)***. If the signatory is other than the President, CEO ***or officer indicated in the updated GIS***, the company or partnership must submit an ***original or certified true copy (certified by the issuing party) of the Board Resolution or Secretary's Certificate*** authorizing such signatory."

This amendment takes effect immediately.

Court of Tax Appeals

Assessment

Mere allegations are not evidence and are not equivalent to proof. Without any other evidence to support the allegations, the CTA is constrained to uphold the correctness of the assessment. After all, tax assessments are presumed correct and made in good faith unless proven otherwise.

Pag-Asa Steel Works, Inc. vs. Bureau of Internal Revenue, Commissioner of Internal Revenue
CTA EB No. 2410 (CTA Case No. 9506) promulgated 13 September 2022

Facts:

Company A is a corporation duly organized and existing under the laws of the Republic of the Philippines. It has been producing the finest quality steel bars since 1964. The company is one of the leading producers of concrete-reinforcement steel bars today and ranks among the Top 200 Corporations in the country.

Company A filed its VAT Declarations for the months of January, February and Quarterly VAT return for the First Quarter of 2014. The company also filed its VAT declaration for the months of April, May and for the Second Quarter or as of June 30. The filing of the VAT declarations and returns were made within the prescribed periods under the law.

On 14 August 2014, Company A received the LOA to examine the Company A's books of accounts and other accounting records for VAT for the period 1 January 2014 to 30 June 2014 pursuant to RMO 2012, VAT Audit Program.

On 25 April 2016, Company A received the PAN, which it protested on 12 May 2016. On 20 June 2016, the FLD/FAN was received by Company A for the said period, requesting the company to pay the deficiency. On 21 November 2016, it received the FDDA. Company A then filed a Petition for Revie on 16 December 2016.

On 2 September 2020, the CTA then rendered an assailed decision wherein the assessment for deficiency VAT was upheld with modification. On 21 December 2020, the CTA in Division promulgated the Assailed Resolution denying Motions filed by both parties.

Both Company A and the CIR filed their Petition for Review and was consolidated under CTA EB No. 2410.

Issue:

1. Was Company A liable for the additional VAT liability?
2. Was the disallowance of Input Tax for non-compliance with the invoicing requirements valid?
3. Was it improper for the CIR to disallow Company A's excess input tax as of 30 June 2014?

Ruling:

1. Yes.

   Sales Discounts

   The CTA *En Banc* concurs with the CTA in Division's findings. The schedule of the price adjustments presented by Company A is insufficient to prove the real nature of the transactions indicated therein. Company A argues that the schedule it presented made reference to the journal voucher from which the adjusting entries were made. However, the journal vouchers were not presented as evidence before the CTA. The CTA in Division also ruled that sales discounts cannot be allowed as deductions from the gross selling price as it is clear under Section 4.106-9 of RR No. 16-05 that only those discounts granted and indicated in the sales invoice at the time of sales may be excluded from gross sales within the same month or quarter they were given.

   Zero-Rated Sales

   The CTA in Division subjected to VAT the sales of Company A to companies which are registered enterprises in Subic Bay Freeport Zone. The CTA in Division nevertheless subjected to VAT some of the sales Company A made to them due to the following:

   - Company A failed to present the proof that the delivery locations are declared as ecozones pursuant to a special law;

- Some are "pick up sales" and there was no evidence as to where the goods were actually brought; and

- The address of one of the companies was with delivery address "Clarkfield, Pampanga" and according to the CTA in Division was not sufficient to presume that the same were indeed delivered to a Clark Freeport Zone address.

The proof of delivery of goods sold to a purchaser located in an ecozone is necessary before such sale may be considered as zero-rated. As Company A filed to present evidence that some of the rebars were sold and delivered to companies located within an ecozone area.

Delivery Expenses/Hauling Charges

Company A claimed that reimbursements of hauling charges from customers should not be subjected to VAT as these charges are for the account of customers separate from sales and are merely reimbursable expenses. The CTA ruled that reimbursement of actual expenses is not subject to VAT if it can be established that:

- The payment is pure reimbursement of cost (i.e., that the amount paid to Company A is exactly the same amount advanced by it) without any mark-up or profit;

- The input tax pertaining to the hauling charges is not claimed by the advancing party, the billing being in the name of the party accommodated; and

- That the payment of reimbursement is not covered by VAT invoices/ official receipts.

As the company failed to provide documentary evidence establishing the above, the CTA is constrained to uphold the correctness of the initial assessment to subject these charges to VAT.

Offsetting of Accounts

The company challenged the imposition of VAT on the offsetting of its receivables with that of their client's payables. The company argues that this is merely a reimbursable advance for expenses and utilities chargeable to the customers and that they did not earn any revenue from this. They also claimed that the rebars sold to the same client, which was subjected to VAT based on the CTA in Division's assessment, are not actual sales as this was used in the construction of the company's own plant.

The CTA *En Banc* found that no new evidence was presented by the company to back up the above assertions, thus it finds no reason to disturb the CTA in Division's initial finding.

2. Yes.

The company was not able to provide the necessary documents to claim these purchases as input VAT.

Under the law, a **VAT invoice** is necessary for every sale, barter or exchange of goods while a **VAT official receipt** properly pertains to every sale, barter or exchange of services. Hence, since the transaction being claimed by the company is a service, the input VAT should have been substantiated with an official receipt rather than an invoice.

VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Although VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount of quantity of goods sold and their selling price (proof of transaction), and the best means to prove input VAT payment (proof of payment).

As the transactions are in the nature of sale of services, i.e., supplier of construction materials and a contractor providing construction services, under the law shall be substantiated by VAT official receipts.

Further, as receipts would be used to claim input VAT, it should not contain any statement stating otherwise. Since the official receipts supporting the purchases indicated the phrase "This Document is Not Valid for Claim of Input Taxes," the CTA held that these cannot be used to claim input VAT.

3. Yes, the CTA ruled that it is improper for the CIR to disallow Company A's excess input tax as of 30 June 2014 merely on the ground that the said amount was carried over to the succeeding returns after the period of audit. The CTA *En Banc* maintained that the CTA in Division correctly credited the said amount against Company A's deficiency VAT liability. As the tax benefit derived by Company from the carry-over of excess input tax redounds to the succeeding period and not to the period covered by the subject VAT assessment, it is logical that the assessment be made in the succeeding period.

   The CTA ruled the consolidated Petitions for review as Denied and the Assailed Decision and Resolution in CTA Case No. 9506 are affirmed.

Commission of Internal Revenue vs. Joselito Ranada Laraya
CTA EB No. 2490 promulgated 14 September 2022

RMO No. 43-90 and RAMO 01-00 evidently state that the LOA must be served or presented to the taxpayer within 30 days from its issuance, otherwise it becomes null and void unless revalidated. RAMO 01-00 further provides that the taxpayer has the right to refuse its service if presented beyond the 30-day period. To emphasize, the condition for an LOA to remain valid even after the 30-day period is its subsequent revalidation, and not the taxpayer's acceptance thereof.

Facts:

On 20 June 2008, the CIR issued a Letter Notice to Mr. L based on a computerized matching performed by the BIR that found a discrepancy of Php11,740,723.77 for fiscal year 2006. To address the findings, the BIR invited Mr. L to the BIR in San Pedro Laguna to present evidence.

On 15 May 2009, a LOA was issued by Regional Director Nestor authorizing a Revenue Officer and a Group Supervisor to examine Mr. L's books of accounts and other accounting records.

On 8 February 2012, a Regional Director (RD) issued a Preliminary Assessment Notice finding Mr. L liable for tax deficiency totaling to Php40,382,305.92.

Within a month or on 2 March 2012, RD Jose issued the Final Assessment Notice/ Formal Letter of Demand (FAN/FLD) for the tax deficiency of Php40,614,312.1.

Mr. L would then file a protest letter against the FAN/FLD with a request for reinvestigation. The request was granted by a Revenue District Officer. The CIR would then find Mr. L to be liable for only Php19,947,627.52.

Mr. L's sister, Ms. L, would act on behalf of her brother appealing before the RD. The RD granted an extended period to submit the protest with supporting documents. Mr. L would be unable to meet the deadline and Ms. L would seek another extension which would be denied. The RD then adjusted the tax deficiency to Php21,106,853.22.

Mr. L filed a Petition for Review with the CTA to which the CTA Division ruled in favor of.

Issue/s:

I. Whether the CTA EB erred in declaring the assessment void due to the service of the Letter of Authority beyond 30 days from its issuance; and

II. Whether the assessment issued against Mr. L already became final, executory, and demandable.

Ruling:

I. No, the CTA EB found that the subject LOA was issued on 15 May 2009, and should have been served on 14 June 2009, not on 30 June 2009. The CTA EB further noted that the LOA was not revalidated and has become null and void when it was served. As a result, the revenue officer had no authority to examine Mr. L's books of accounts nor other accounting records.

II. No, the CTA EB declared that the deficiency tax assessments were not yet final executory, and demandable as Mr. L was able to appeal on time. The issued FDDA was dated 2 July 2014, it is appealable to the CTA within 30 days from Mr L's receipt thereof on 7 August 2014, or until 6 September 2014.

Mr. L filed a Petition for Review challenging CIR's final decision on 5 September 2014, which is well within the 30-day period. Hence, the deficiency tax assessments have not yet become final, executory, and demandable.

Commissioner of Internal Revenue vs. Chun Lang Chan, then operating under business name TOKAI RUBBER PRODUCTS, represented by Li Chuan Chang
CTA EB Case No. 2489 promulgated 14 September 2022

The taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give due consideration to these, in making their conclusions on the taxpayer's liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions. Failure to do so constitutes a violation of the taxpayer's right to due process.

Facts:

In the assailed Decision of the CTA Second Division, the instant Petition for Review filed by the Company C was granted, thereby cancelling and setting aside the assailed FLD and Assessment Notices all dated 16 June 2017, holding Mr. C liable for deficiency income tax and VAT, for taxable period 1 January 2014 to 13 November 2014 (cessation of business), in the total amount of Php13,104,242.28, on the ground that the Commissioner failed to observe the due process requirements enshrined in RR No. 12-99, as amended. Further, in the assailed Resolution, the CTA Second division denied the Motion for Reconsideration filed by the CIR.

Aggrieved, the CIR filed his Petition for Review before the CTA *En Banc*, with the contention that Mr. C was accorded the due process enshrined in the Revenue Regulations No. 12-99, as the latter was furnished with a copy of the PAN and Assessment Notices with FLD. Further, the Commissioner avers that the failure of Mr. C to submit the necessary documents to support his protest leads to the assessment against him to become final, executory, and demandable.

Mr. C counters that he timely refuted the PAN, and that his Protest to the FLD/ Assessment Notices was supported with the same documents that he attached to his Reply, which he claims the Commissioner did not read, depriving him of the right to be heard. He further avers that the Revenue Officer acted beyond his authority by continuing with the audit beyond the prescribed 120-day period without revalidating the LOA.

Issue:

Was the BIR's tax assessment valid?

Ruling:

No. The FLD/Assessment Notices issued by the BIR are void for failure to comply with the due process requirement.

Under Section 228 of the Tax Code, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Further, RR No. 12-99, as amended by RR No. 18-2013, prescribes that the FLD/FAN must state, among others, the facts, and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

The use of the word "shall" in Section 228 of the Tax Code, as amended, and RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him/her is mandatory. This is an essential requirement of due process and applies to the PAN, FLD with FAN, and the FDDA.

Citing a similar case, the CTA *En Banc* agrees with the contention of Mr C, emphasizing that the taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give due consideration to these, in making their conclusions on the taxpayer's liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions. Failure to do so constitutes a violation of the taxpayer's right to due process.

Further, the CTA *En Banc* noted that, notwithstanding the Reply and the supporting documents submitted by Mr. C upon receipt of the PAN, the BIR issued the FLD and Assessment Notices which merely reiterated and copied *verbatim* the assessments in the PAN except for the amounts of interest, without even commenting nor addressing the matters raised and the documents submitted by Mr. C. The Commissioner's failure to give due consideration to Mr. C 's defenses, explanations, and supporting documents when she made her conclusion as to Mr. C 's tax liability, could hardly be considered substantial compliance with the due process requirement. The Commissioner's disregard of the due process standards and rules under RR No. 12-99, as amended, and the failure to sufficiently inform Mr. C of the reasons for the conclusions under Section 228 of the Tax Code, renders the subject deficiency income tax and VAT assessments null and void.

A taxpayer filing through the e-FPS may pay the tax due either manually or electronically following the "pay-as-you-file" principle pursuant to RR No. 9-2001, as amended by RR No. 2-2002. The electronic filing of the return ahead of the payment of the tax due is still in accordance with the "pay-as-you-file" principle, and no penalties shall be imposed for taxpayers who e-filed earlier and paid later but on or before the due date of the applicable tax. Moreover, the imposition of the 25% surcharge and the 20% interest is mandatory and automatic in case of late payment of taxes due as shown on the filed return.

Commissioner of Internal Revenue vs. Tann Philippines, Inc.
CTA EB No. 2415 (CTA Case No. 9433) promulgated 14 September 2022

Facts

On 24 January 2014, Company A filed, without payment, its Quarterly VAT Return for the 4th quarter of the year 2013 through BIR's Electronic Filing and Payment System (e-FPS).

Consequently, on 28 January 2014, Company A paid its tax due stated in its Quarterly VAT Return through e-FPS. However, the CIR considered this transaction as late payment of one day, the deadline being 27 January 2014 (Monday), on which 25% surcharge, interest, and compromise penalties were imposed.

On 8 September 2014, Company A received an Assessment Notice dated 11 August 2014 from Large Taxpayers Division-Makati (LTD-Makati) with an assessed amount of Php1,552, 212. 62 for the late payment of one day of its Quarterly VAT for the 4th quarter of the year 2013.

On 8 October 2014, Company A filed an application for abatement of surcharge dated 5 October 2014 and requested for a reconsideration of the assessment by way of abatement of the 25% surcharge of Php 1,498,927. 42 and stated its amenability to pay the interest and compromise penalty.

On 22 July 2016, Company A received the Notice of Denial dated 10 May 2016, from the CIR, denying its application for abatement, and reiterating the collection and payment of the amount of Php1,552,212.62, plus all increments incident to delinquency via the e-FPS, within 15 days from receipt thereof; otherwise, the BIR shall enforce the collection thereof without any further notice through administrative summary remedies provided by law.

On 18 August 2016, Company A filed a Petition for Review, praying that the CTA in Division find Company A not liable for the surcharge, interest, and compromise penalty, in the aggregate amount of Php1,552,212.62.

On 3 March 2020, the CTA in Division promulgated the assailed Decision and granted the Petition for Review of Company A. The CTA in Division held that Company A is not liable for the surcharge interest and compromise penalty in the aggregate amount of Php1,552,212.62. The CTA in Division further held that the Assessment Notice dated 11 August 2014 and Warrant of Garnishment dated 16 August 2016 issued against Company are void, cancelled and set aside.

The BIR was ordered to refund or to issue a tax credit certificate (TCC) to Company A, the amount of Php1,552,212.62.

On 5 February 2021, the BIR filed a Petition for Review before the CTA *En Banc*.

Issue:

Whether Company A is liable to 25% surcharge, interest and compromise penalties for one-day late payment of its quarterly VAT for the 4th quarter of 2013.

Ruling:

Yes. Company A is liable to pay the "one-day late payment" penalties.

Section 114 of the Tax Code provides that every person liable to pay quarterly VAT shall file the VAT return and pay the net VAT within 25 days following the close of the taxable quarter.

Further, a taxpayer filing through the e-FPS may pay the tax due either manually or electronically following the "pay-as-you-file" principle pursuant to RR No. 9-2001, as amended by RR No. 2-2002. The electronic filing of the return ahead of the payment of the tax due is still in accordance with the "pay-as-you-file" principle, and no penalties shall be imposed for taxpayers who e-filed earlier and paid later but on or before the due date of the applicable tax.

It logically follows, therefore, that if the applicable tax is paid after the due date, the corresponding penalties shall be imposed.

In the instant case, Company A's quarterly VAT return for the 4th quarter of 2013 was due for filing and payment on or before 25 January 2014. Considering that 25 January 2014, fell on a Saturday, it had until the next working day or on 27 January 2014 (Monday) to file and pay the said return. Company A filed the return, through e-FPS, on 24 January 2014 (Friday), or three days before the deadline, but paid the Php5,995,709.68 VAT, also through e-FPS, on 28 January 2014 (Tuesday), or one day after the deadline. Consequently, the payment was considered one-day late.

The CTA also held that late payment of VAT squarely falls under Section 248 (A) (4) of the Tax Code which imposes a civil penalty upon Company A's failure to pay the full amount of the VAT due as shown in its 4th quarterly VAT return of 2013 on or before the deadline. The CTA emphasized that while the filing and payment of taxes may not be simultaneous, both must be done on or before the statutory deadline.

The CTA further ruled that the imposition of late payment surcharge and interest is mandatory and automatic in cases of late payment of taxes due as shown on the filed return; hence, Assessment Notice No. 122-0159-14 is valid even if issued and served without an LOA and a PAN. Sections 247, 248 (A) (4) and 249 (C) (1) of the Tax Code do not require an LOA nor a PAN before the surcharge and the interest can be imposed and collected. Besides, had the law intended that an LOA/PAN is required under Sections 248 (A) (4) and 249 (C) (1) before the assessment and collection of civil penalties, it must have stated a "notice" as found in Sections 248 A (3) and 249 (C) (3) of the Tax Code, which speaks of a notice of assessment in the case of "deficiency" taxes made known after audit/investigation.

The intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the imposition of a surcharge is not penal but compensatory in nature — it is compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State.

Refund/ Issuance of Tax Credit

Input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods "for conversion into or intended to form part of a finished product for sale including packaging materials," but also those purchase/ importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code, as amended.

Commissioner of Internal Revenue vs. Philippine Geothermal Production Company
CTA Case No. 2453 promulgated 17 August 2022

Facts:

Company A is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

On 30 March 2016, Company A filed with the BIR its Application for Tax Credits or Refunds (BIR Form No. 1914) for its unutilized input taxes for the 1st quarter of TY 2014. On 30 June 2016, Company A filed with the BIR another Application for Tax Credits or Refunds for its unutilized input taxes for the 2nd quarter of TY 2014.

The CIR failed to act on Company A's administrative claim within the 120 days which ended on 28 July 2016. Taking the former's inaction as a denial of its claim, Company A elevated its case before the CTA in Division on 25 August 2016, by way of a Petition for Review.

On 26 October 2016, the CIR issued a tax credit certificate (TCC) in favor of Company A. Attached thereto was an Authority to Issue VAT Credit/Refund authorizing the issuance of a TCC to Company A.

On 30 September 2016, Company A filed with the BIR its Application for Tax Credits or Refunds for its unutilized input taxes for the 3rd quarter of TY 2014. On 25 November 2016, unsatisfied with only a partial approval of its claim, Company A elevated its claim before the CTA in Division.

Acting on its claim, the CIR issued a TCC in favor of Company A on 10 January 2016 with a letter recommending the issuance further of another TCC.

On 27 December 2016, Company A filed with the BIR its Application for Tax Credits or Refund for its unutilized input taxes for the 4th quarter of TY 2014. On 9 February 2017, contesting the disallowance made by the CIR, Company A appealed the CIR's decision before the CTA.

The CIR issued a TCC on 25 April 2017, and partially approved Company A's claim. An Authority to Issue VAT Credit/Refund was attached thereto authorizing the issuance of another TCC. On 9 May 2017, similarly unsatisfied with the CIR's action, Company A filed another Petition for Review against the CIR's partial grant of its refund.

On various dates, Company A filed a Motion to Consolidate with the CTA's First and Second Division CTA Cases No. 9501, 9534, 9558 with CTA Case No. 9440 which were granted by CTA in Division.

On 18 November 2020, the CTA in Division rendered the assailed Decision partially granting the consolidated Petitions for Review. The CTA a quo ordered the CIR to refund or issue a TCC, in favor of Company A, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2014.

On 18 March 2021, the CIR then filed the instant Petition for Review before the CTA *En Banc*.

Issue:

Was Company A entitled to the refund or issuance of TCC representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2014?

Ruling:

Yes.

The CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund. CTA in Division is not barred from receiving, evaluating and admitting evidence submitted by Company A including those that may not have been submitted to the BIR.

Company A has established that the creditable input taxes are attributable to its zero-rated sales.

Section 112 of the Tax Code, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales.

Creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionately on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

Apart from the general averment that Company A failed to prove that its claimed input VAT were directly attributable to zero-rated sales, the CIR failed to make any specific discussion to support his stance, or to particularly pinpoint which of the findings of the CTA in Division, as regards the attributability of the refundable input VAT, is erroneous. The mere general averment of the CIR failed to convince this CTA *En Banc* that a reversible error was committed by the CTA in Division that would warrant the modification or reversal of the assailed Decision and Resolution.

First Gen Hydro Corp. vs. Commissioner of Internal Revenue
CTA EB Case No. 2456, promulgated on 18 August 2022

For sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating, the VAT-registered taxpayer must comply with invoicing requirements under Sections 108 (B) (3), 113, and 237 of the Tax Code, as amended, and must submit its COC issued by the ERC as required under EPIRA.

Facts:

On October 29, 2020, the CTA Division denied the Company F's claim for refund of its unutilized zero-rated input VAT for the year 2016 for failure to prove compliance with the requisites for VAT refund, in particular for its failure to submit a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) covering the whole period of 2016, its COC having been issued only on March 1, 2016.

Company F filed the present Petition for Review with the CTA *En Banc* appealing the Decision, and praying, in the alternative, the remand of the case to the CTA Division for presentation of supplemental evidence. Company F maintains that where the claim for tax refund is premised on the Tax Code, as amended, and not the Electric Power Industry Reform Act of 2001 (EPIRA), the requirement of COC issued by the ERC is inapplicable.

Issue:

Was Company F entitled to the claim for refund?

Ruling:

No, since Company F's sales for January to February 2016, when it was yet to be issued a COC by the ERC, are disqualified for VAT zero-rating.

In the case of CIR v. Toledo Power Company (2015), the Supreme Court clarified that for sales of electricity and generation services to the National Power Corporation (NPC) to qualify for VAT zero-rating, the VAT-registered taxpayer needs only show that it is a VAT-registered entity and that it has complied with the invoicing requirements under the Tax Code, as amended. On the other hand, for sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating, the VAT-registered taxpayer must comply with invoicing requirements under Sections 108 (B) (3), 113, and 237 of the Tax Code, as amended, and must submit its COC issued by the ERC as required under EPIRA.

As these sales were made to entities other than NPC, as proven by their respective Official Receipts, the sales for the period of January to February 2016 cannot qualify for VAT zero-rating without the submission of a COC issued by the ERC.

Pulp Specialties Philippines, Inc. vs Commissioner of Internal Revenue
CTA EB Case No. 2575, promulgated on 31 August 2022

The CIR's inaction is "deemed a denial" of the claim. The taxpayer's failure to appeal within 30 days renders the "deemed a denial" decision of the CIR final and unappealable. The principle of solutio indebiti is not applicable to cases involving tax refunds.

Facts:

On 8 July 2021, the CTA Division denied the Company P's Petition for Review on the ground of lack of jurisdiction, since the Petition for Review was filed only on 27 September 2018, or way beyond the end of the 30-day period to appeal the CIR's inaction.

Company P asserts that the 30-day period should be counted from 28 August 2018, the date of its receipt of the Denial Letter dated 16 August 2018.

Issues:

I. Does the CTA have jurisdiction over the claim for refund?

II. Does the principle of *solutio indebiti* apply in tax refund cases?

Ruling:

1. No since the Petition for Review was not filed on time before the CTA Division.

   Based on Section 112 (A) and (C) of the Tax Code, as amended, and the Revised Rules of the CTA, the administrative claim for tax refund or credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made. In case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of 30 days from receipt of the decision or ruling, or the expiration of the 120-day period fixed by law, to file a Petition for Review with the CTA.

   The 30-day period provided by law is counted from the receipt of the CIR's decision/ruling, or from the lapse of the 120-day period, whichever is sooner. A judicial claim filed in a period less than or beyond the said 120+30-day period, is outside the jurisdiction of the CTA.

   The CIR's inaction is "deemed a denial" of the claim. The taxpayer's failure to appeal within 30 days renders the "deemed a denial" decision of the CIR final and unappealable.

   In this case, the 120-day period for respondent to act on the administrative claim of petitioner commenced on 30 August 2005, and expired on 28 December 2005. Given the inaction of the respondent by the end of the 120-day period, petitioner had 30 days from 28 December 2005, or until 27 January 2006, to file its judicial claim with the CTA. However, Company P only filed its judicial claim on 27 September 2018, or more than 12 years after the lapse of the period. For Company P's failure to comply with the 120+30-day mandatory period, the CTA *En Banc* finds that the CTA Division correctly dismissed petitioner's judicial claim, which was filed out of time.

2. No, the principle of *solutio indebiti* may not be applied to tax refund cases.

   In the case of CIR vs. Manila Electric Co. (2014), the Supreme Court rejected the application of the principle of *solutio indebiti* to tax refund cases, to wit:

   "[xxx xxx xxx] There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid."

   It is well-established that refunds are in the nature of exemptions, and thus, strictly construed against the claimant. Hence, it is claimant's burden to show that it has fully complied with the conditions for the grant of the tax refund or credit since non-compliance with the mandatory periods and non-observance of the prescriptive periods shall bar its judicial claim for tax refund or credit.

Commissioner of Internal Revenue vs. Empress Dental Laboratories Inc., CTA EB No. 2530 (CTA Case no. 10186) promulgated on 7 September 2022.

As a general rule, tax refunds are construed against the taxpayer. When the taxpayer however presents reasonable proof, then the burden shifts to the taxing authority. To rule otherwise would be to unduly burden the taxpayer, which has no statutory nor jurisprudential basis.

Facts:

On 13 October 2017, Company E was processing its eFPS payment in the amount of Php281,003.98 for the month of September 2017. During the eFPS processing, it generated three requests for confirmation for the remittance of the September 2017 Withholding Tax Compensation (WTC). On 17 October 2017, Company E through its Accounting Supervisor, approved all three eFPS requests covering the same WTC tax due. As a result, two requests for eFPS were overpaid.

On 24 October 2017, Company E filed with the BIR a request for a tax refund due to a system error or alleged erroneous payment for its September 2017 WTC.

Issue:

Was Company entitled to a refund?

Ruling:

Yes. Company E was entitled to a refund.

It is undisputed that on 13 October 2017, Company E filed its monthly WTC return via eFPS. During the course of the electronic payment, however, Company E encountered technical difficulties. On the same day and on its 3rd attempt, it was able to successfully process its payment for the 2017 September WTC tax due. It is likewise established that the BIR eFPS generated three requests for confirmation of remittance.

It must be emphasized that after the claimant has successfully established a *prima facie* right to the refund, the burden now shifts to the BIR to disprove such a claim.

Verily, Company E was able to establish that it had presented three eFPS payment confirmations and a BPI Expresslink statement of transactions showing payments of identical amounts for identical tax types pertaining to identical periods.

Supreme Court Cases

Lily C. Lopez vs. Lolito S. Lopez, Ma. Rachel Nicolette Lopez, Barbara Villas, Benedicto Villafuerte, Ma. Luisa Paras, Ruel Villacorta, Teresita C. Fernando and iSpecialist Development Corporation/Lolito S. Lopez, Mario S. Lopez, Andresito S. Lopez, Barbara O. Villas, Benedicto L. Villafuerte, Ma. Luisa I. Paras, Ruel S. Villacorta, Teresita C. Fernando LC Lopez Resources, Inc. and Conqueror International, Inc.,
Supreme Court (First Division) G.R. Nos. 254957-58, promulgated on 15 June 2022

Sale of unissued shares must be ratified by the Board of Directors of a company. Otherwise, it results in a violation of a shareholder's pre-emptive right.

Facts:

Petitioner Lily C. Lopez and her husband, Respondent Lolito S. Lopez are married and are the majority shareholders in iSpecialist Development Corporation, LC Lopez Resources, Inc., and Russ Marketing, Inc.

In his capacity as President, Respondent Lolito Lopez called for special stockholders' meetings in the aforementioned corporations where new members of the Board of Directors were elected. Petitioner Lily Lopez filed a Complaint to nullify said meeting on the ground that, among others, unissued shares were allowed to vote and were used by Lolito Lopez to elect the new Board of Directors. Petitioner Lily Lopez argues that these shares could not be utilized without violating her preemptive right.

Issue:

Did Respondent Lolito Lopez validly acquire the unissued shares and properly vote on these that resulted in a valid meeting?

Ruling:

No, Respondent Lolito Lopez did not validly acquire the shares and as a result, the meeting is invalid.

The shares were acquired without the approval of the board of directors. The same cannot be done in the absence of a board resolution authorizing the transaction pursuant to Section 23 of the Corporation Code. Without the board resolution authorizing the sale of the unissued shares, Respondent Lolito Lopez could not have legally used the same in voting for a new set of directors. In addition, the sale of the shares violated Petitioner Lily Lopez's right of preemption under the Corporation Code.

City Of Davao and Bella Linda N. Tanjili in her Official Capacity as City Treasurer Of Davao City vs. Arc Investors, Inc.,
Supreme Court (Third Division) G.R. No. 249668, promulgated on 13 July 2022

The primary test for the distinction between a holding company from a financial intermediary for purposes of local business taxation contemplates "regularity of function, not on an isolated basis, with the end in mind for self-profit."

Facts:

Petitioner Arc Investors, Inc. (ARCII) is a domestic corporation duly organized as a holding company. Pursuant to such activities, it received dividend income from shares of stock that it owns and interest income from money market placements.

The City of Davao assessed ARCII for local business taxes (LBT). ARCII protested this assessment, contending that it is a not a bank or financial institution, upon which LBT on income may be imposed by cities. It also argues that it is not engaged in the business of investing, reinvesting, or trading securities and/or foreign exchange. ARCII underscored that its receipt of dividends and interests is merely incidental to, or as a consequence of, its ownership of shares of stock and money market placements; hence, not constitutive of "business activity" as may be subject to LBT under the Local Government Code (LGC).

Issue:

Can ARCII be considered as a bank or a financial institution subject to LBT under Section 143(f), in relation to Section 151 of the LGC?

Ruling:

No, ARCII is not a bank or a financial institution that may be subject to LBT. Under Section 143(f) of the Local Government Code (LGC), the persons liable to pay LBT are banks or other financial institutions by virtue of the nature of their business.

ARCII, in owning shares of stocks and deriving dividends and interests therefrom cannot be said to be "doing business" as a bank or other financial institution. The primary test for the distinction between a holding company from a financial intermediary for purposes of local business taxation contemplates "regularity of function, not on an isolated basis, with the end in mind for self-profit." In the case, ARCII's placement of dividends derived from shares of stock in the market incidentally earning interest, does not negate the corporation's restricted underlying purpose as a holding company. Lacking in the element of regularity or recurrence for the purpose of earning a profit, ARCII's money market placements cannot amount to "doing business" that may be subject to local business taxation.

Thus, the City of Davao acted beyond its taxing authority when it assessed ARCII for local business tax.

SGV | Building a better working world

SGV is the largest professional services firm in the Philippines. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

SGV & Co. is a member firm of Ernst & Young Global Limited. EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets. Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com/ph.

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor. While these information have been carefully prepared for reference, they are of a general nature and should not be applied without the guidance/advice of experts trained specifically to interpret and apply them.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.